

Message

From: Allenbach, Becky [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FD8D7185973C44268441863F02A769D1-ALLENBACH, BECKY]
Sent: 8/27/2020 10:06:36 PM
To: McGill, Thomas [Mcgill.Thomas@epa.gov]
Subject: RE: Urgent - needed this afternoon

done

Becky B. Allenbach, Deputy Director
Water Division
EPA Region 4
Office 404-562-9687

Ex. 6 Personal Privacy (PP)

From: McGill, Thomas <Mcgill.Thomas@epa.gov>
Sent: Thursday, August 27, 2020 6:02 PM
To: Allenbach, Becky <Allenbach.Becky@epa.gov>; Jones, Erica <Jones.Erica@epa.gov>
Cc: Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Ellington, Natalie <Ellington.Natalie@epa.gov>
Subject: RE: Urgent - needed this afternoon

I just spoke with Jeaneanne, and she asked that I add more information regarding item #2, which I've included below in red text. Please let me know if you have questions or need any additional information. Tom

From: Allenbach, Becky <Allenbach.Becky@epa.gov>
Sent: Thursday, August 27, 2020 5:07 PM
To: McGill, Thomas <Mcgill.Thomas@epa.gov>; Jones, Erica <Jones.Erica@epa.gov>
Cc: Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Ellington, Natalie <Ellington.Natalie@epa.gov>
Subject: RE: Urgent - needed this afternoon

Thanks Tom!

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Below are responses to questions 1-4 (see also additional background for #2 below) Please let me know if you need any additional information.

1. Roughly what share of waters is the state assuming?

- If EPA approves Florida's request to administer a CWA 404 program, Florida will assume the majority of inland waters.
 - For projects whose boundaries cross a guide line 300' from retained waters, and involve impacts to waters retained by the Corps, the permit for all waters within the project boundary will be processed by the Corps as retained waters.
 - If the EPA approves Florida's request, the assumed program will not apply to waters within "Indian country," as that term is defined at 18 U.S.C. § 1151.
2. What is the impact of assumption on the Everglades? Why?
- An assumed state program must be at least as less stringent as required by the CWA and its implementing regulations, and ensure compliance with the regulations known as the Section 404(b)(1) Guidelines, so assumption would not limit the protections for these waters.
 - The EPA understands that much of the Everglades would be assumed by the State. Two examples of exceptions (i.e., where jurisdiction of waters are retained by the Corps) include:
 - o Tribal lands within the Everglades.
 - o Corps Civil Works projects specifically authorized by Congress under CWA 404(r), e.g., under CERP (Comprehensive Everglades Restoration Plan), would remain under the purview of the Corps, so would not result in any changes after assumption.
 - See additional information below.
3. What is the status of seagrass restoration in Tampa Bay? Where else have we done seagrass restoration? Is it working?
- The Tampa Bay National Estuary Program has exceeded the environmental goal it set 20 years ago through the restoration of more than 38,000 acres of seagrass.
 - The TBNEP continues to shine as a national model for this remarkable achievement.
 - There have been some pockets of seagrass restoration achieved in other areas of Florida, but these are very limited. Two examples of improved seagrass restoration as the result of improved water quality include the Banana River and Mosquito Lagoon as a result of efforts by the Indian River Lagoon NEP.
4. S FL Geographic Initiative – please provide the updated funding information (summary and this year's anticipated amounts). Along with a status of the projects this year.
- The EPA has funded monitoring of seagrass, water quality and corals on an annual basis for more than 10 years. Funding for this effort has been approximately \$900k/year for the past 5 years, including FY2020.
 - During 2020, the EPA intends to fund projects that protect water quality and corals in South Florida at a level of at least \$3 million.
 - o The EPA issued a Request for Application that closed on August 7, and we are currently reviewing 40 projects that were submitted.
 - o We expect to select and award these projects in the near future.

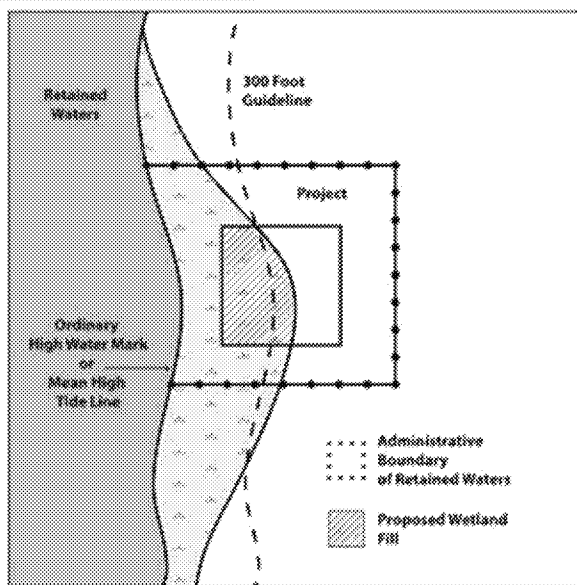
5. Any hot issues in Tampa Bay area?

Extra background for Question 2 above:

Administrative boundary definition: The administrative boundary demarcating the adjacent wetlands over which jurisdiction is retained by the Corps is a 300-foot guide line established from the ordinary high water mark or mean high tide line of the retained water. In the case of a project that involves discharges of dredged or fill material both waterward and landward of the 300-foot guide line, the Corps will retain jurisdiction to the landward boundary of the project for the purposes of that project only.

In other words, if a project's boundary crosses the 300' guide line and there are impacts on the Corps side of that 300' guide line, the Corps will process the proposed permit for *all* waters within that project boundary; the project boundary is the administrative boundary of retained waters (for that project only).

Example 1. Project with dredges and fill activities both waterward and landward of the 300-foot guide line. This application would be processed by the Corps.



Re: Civil Works, 404(r):

The Corps-FDEP memo includes this language in Section V(B)2:

(2) Corps Civil Works projects involving the discharge of dredged or fill material into waters of the United States must be developed in accordance with the guidelines promulgated under Section 404(b)(1) of the CWA, as amended, unless exempted by Section 404(f) of the CWA. For Corps Civil Works projects in State assumed waters, other than projects specifically authorized by Congress for which the Corps has applied or will apply Section 404(r) of the CWA, the Corps and DEP will develop and follow, as practicable, mutually agreed upon procedures for submission of information necessary for DEP to process an application for a permit under the State 404 Program.

CWA 404(r)

(r) Federal projects specifically authorized by Congress

The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after December 27, 1977, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such environmental impact statement has been submitted to Congress before the actual discharge of

dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for such construction.